

Not in M.

SPEECH

OF

HON. TIMOTHY O. HOWE, OF WISCONSIN,

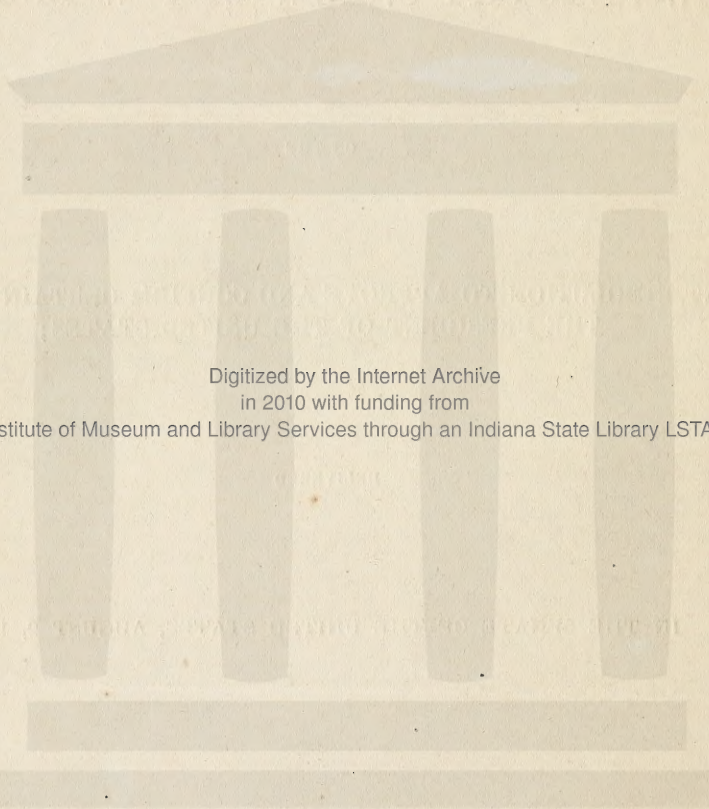
ON THE

JOINT RESOLUTION TO APPROVE AND CONFIRM CERTAIN ACTS OF
THE PRESIDENT OF THE UNITED STATES;

DELIVERED

IN THE SENATE OF THE UNITED STATES, AUGUST 2, 1861.

WASHINGTON:
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SPEECH.

The Senate having under consideration the joint resolution (S. No. 1) to approve and confirm certain acts of the President of the United States for suppressing insurrection and rebellion—

Mr. HOWE said:

Mr. PRESIDENT: I have sat here during the session up to this time, and heard this and kindred measures of the Administration discussed without taking any part in the debate, and without intending to take any part in it. Now, however, I beg the indulgence of the Senate while I make a few remarks upon the resolution before it.

I am going to vote for the resolution, and I am going to vote for it upon the assumption that the different acts of the Administration recited in this preamble were illegal, and not upon the assumption that they were legal and valid. I "approve" of the doing of them, and therefore I vote for that portion of the resolution. I am willing to make them as "legal and valid" as if they had the previous express sanction of Congress; and therefore I vote for that clause of the resolution. The resolution does not affirm that they were legal; that they were sanctioned by the legislative power of the United States; but it declares that they shall be as legal and valid as if they had had the previous express authority and direction of the Congress of the United States.

I want to say furthermore, Mr. President, that there may be no sort of mistake about the position I occupy, that my approval of these measures, that my admiration of them, is proportioned exactly, mathematically, to the extent that they were violations of the existing law. That is the proposition I submit here; that is the proposition I abide by. Let me not be misunderstood. I am here to help to make laws, and I mean to abide by them when they are made, under all ordinary circumstances. If the President had had the sanction of the Legislature to do what he did, of course I should have expected him to do it, and I should have approved of its being done; but then it would have been but the discharge of a simple, plain duty. I should have said the President had done well; he had discharged his duty; but if he did

these things without the direction of law, if he did these things without the express direction of the Congress of the United States, if he took the responsibility upon his single self of saving the country without the authority and the sanction of law, I say he did more than well, he did bravely.

We forget, sir, what we have passed through. The sun shines so brightly about us that we think it has never been overclouded. That is a mistake; it has been. With the broad glare of day about us, we are ready to swear that we have never seen any night. That is a terrible mistake. We have seen the night—a very dark and a very cloudy night. Let me recite, very briefly, the circumstances under which the President did the things recited in the preamble of this resolution. I think you remember them.

Seven States of the Union had declared their independence of the Government of the United States, and had set up a government in hostility to it. To maintain that independence, they had levied armies, and not for the simple purpose of maintaining that independence, but, I say, for the purpose additional to that, and more heinous and wicked than that, of subverting the independence and Government of the United States. Not merely for the purpose of maintaining their own independence, but of conquest, were those armies levied. I affirm that. Were they not? You heard a Senator, not now here, tell you that the independence of those States was achieved, that it was a fixed fact. You heard him tell you in tones insolent, insulting, that if you dared to approach within three leagues of the coast of those States with any one of your ships and your national flag floating from it, it would be deemed an act of war, and would be resented as an act of war. You heard a Senator here, upon this floor, introduce a resolution into this body instructing the President of the United States to withdraw the troops of the United States from every one of the garrisons within the limits of the States which had declared their independence. Those garrisons, let me remark in passing, were not merely under the jurisdiction of the United States; they were the property of the United States, and subject, by express

grant of the several States, to the exclusive jurisdiction of the Government of the United States; and therefore the purpose of attempting to withdraw your troops or to expel your troops from those garrisons, was not to maintain the independence of those States, but it was for the purpose of driving back the Government of the United States from portions of the country over which it had, by express grant of those States, exclusive jurisdiction—jurisdiction to the exclusion of every one of those States, as well as of that anomalous government which called itself the government of the confederate States. For the purpose of expelling your troops from those garrisons, they invested two of them with armies, they sat down before them—one in the harbor of Charleston and one in the bay of Pensacola.

More than that: a Senator, not now upon this floor, introduced a resolution instructing the President of the United States to withdraw the troops of the United States from the District of Columbia—from the very capital of the United States. Was that for the purpose of maintaining the independence of the confederate States? Was not that for the purpose of conquest? What jurisdiction had the confederacy ever reserved or delegated over the District of Columbia? What jurisdiction had any one of those States over the District of Columbia or over the city of Washington?

That was not all. The rebellion as we call it, as it was, was not confined within those States. It spread away beyond them all. Even your Territories were assailed by it; there was scarcely a district about us in any direction, into which the dry-rot of this rebellion did not extend. Revolt was preached in New Mexico; emissaries were sent to teach it to the Indians upon the frontier. Tennessee, Kentucky, Missouri, were agitated, and profoundly agitated. Maryland, here upon our northern border, was also agitated. Nay, sir, the very geography of your country was reversed, and the States which I have just enumerated, Kentucky, and Tennessee, and Maryland, which had nestled from the organization of your Government in the very heart of the Republic, began to be talked of as “border States”—the very central States of the Union. There were speculations afloat about the secession of the city of New York, that it might secede not only from the Union, but from the State of New York, and that you might see there, instead of the metropolis of the nation, a free city.

Those were the circumstances under which the President acted. What would you have had him do, sir? I put it to the Senators, what would you have him do? He had no army to contend with the forces which were raised to carry on this war of conquest and subjugation. He was notified of this purpose. He who now represents that confederate government as vice president, in the city of Savannah, early in the progress of these events, detailed specifically the progress of the work of subjugation and of conquest. He told you how the States which began to be called border States were to file off from the Union and join the confederacy. He told you how the States of the Northwest might be expected to wheel into the line, and when. He told you that the work of

disintegration in the old Union might be expected to go on speedily and fast.

This did not all exist in threats. They took possession of every point you had which you did not actually occupy by a military force. They drove you out of garrison after garrison, of post after post; and they took pains to do it, in more than one instance, not merely for the purpose of getting possession of the spot, but they were careful to demonstrate, by the manner in which they took possession, that they meant it as an act of conquest. Let me recite to you but a single instance of that fact. There was in the harbor of Charleston a post unoccupied except by a mere guard, a single individual. Castle Pinckney I think it is called. If the State of South Carolina, or the city of Charleston, or the government of the confederate States, deemed it worth while to possess that post, they had but to send a constable down there, or a city watchman, any man, and take possession of it. That did not suit their purpose. There would have been no pretense of subjugation, of conquest; in that. Sir, they took possession of it, nevertheless; and, as I well remember, it occupied a column in the leading journal of Charleston to describe the details of the military movement by which they conquered and took possession of Castle Pinckney. They told you what military company was mustered and paraded. They told you how carefully the object of the movement was concealed from the men to be employed in it. They told you how long they paraded in the streets of Charleston and before its population. They told you how they went down to the dock, and upon what boat they were taken, and finally how they landed before Castle Pinckney. Instead of walking up and opening the gates, they had scaling ladders, and with those this military company rushed around on the rear of the fort, scaled the walls, and conquered the old man who was inside of them.

That was their first great conquest. Their second was like unto it. I told you they had invested two of your forts—Sumter and Pickens. They were not content with besieging them: they took one of them. They were notified expressly, told officially by the commander there, that he had but a garrison of about seventy or eighty men, and they did not threaten the peace of the city at all; told by him distinctly that if allowed to remain there but a few days longer, he would have to retire before starvation. They could not allow him to do that. Why? Because if they had allowed him to leave Fort Sumter, retiring simply before hunger, there would have been no pretense for saying that he had been conquered by the forces of the confederacy. And so, when, as the record tells you, those seventy men had not tasted bread for forty-eight hours, at four o'clock in the morning, they say, some nine great, black, frowning batteries opened their brazen throats upon this devoted garrison; and for forty hours they rained a storm of iron upon them, until, as they tell you, the walls of that fort resembled a honey-comb. Those seventy men did capitulate.

There was their second conquest. Here were the threats; here were the overt acts in illustration of what they meant by their threats. What would

you have had your President do? I say again he had no army; he had no navy; he had no Congress here to give him either, and he could not immediately summon a Congress to clothe him with this authority. Would you, sir—would any man here—have had him fold his arms, and say, I have no authority; I know the country is going to pieces; I know that in the progress of a very few weeks or months we shall not have anywhere a vestige of the Government of the United States; I know I have taken an oath to maintain this Constitution, and enforce these laws which have been enacted in accordance with it; and I know within a very few weeks there will not be a dozen States of the Union which pretend to pay the slightest obedience either to the Constitution or the laws if things go on as they are; but then the Legislature has not spoken; I must be still; let things take their course; I cannot help it.

Would you have had him use that language? That had been tried once, had it not? You had heard just such language as that from a President; and, if I remember aright, you did not enjoy it. You had just heard a President of the United States, made Commander-in-Chief of the Army and of the Navy, charged with the duty of giving information to Congress of the state of the country; you had heard him come before Congress and tell you that State after State was leaving the Union and defying its authority; that he thought it was illegal, but he could not help it; nay, more, he said Congress could not help him to help it; that Congress could not clothe him with power which would allow him to stem this tide of secession or rebellion. He told you that the Constitution of the United States had not delegated to the Congress of the United States the authority to make war upon one of the States of the Union; and so you saw that President here, standing in your capital, before the face of the whole world, and I am afraid God saw him standing here, idly by, his arms plunged to the elbows in the Treasury, taking his salary regularly, advertising the world that he could do not one single tithe of his duty; that he was nominally the Chief Magistrate, but practically was no magistrate; that he was charged by the Constitution with the highest authority and the highest trusts under it, but that practically he had no authority, no power, and no control, and could not discharge a single trust. You have seen him in that critical condition, standing there, so shamelessly, while I declare, sir, the very walls of the Republic seemed collapsing about him; standing there so idly, so shiftless, until at the very close of his constitutional term, he sort of oozed out from under the ruins and slunk away to Wheatland.

I say this thing was seen. We all saw it. All good men everywhere saw it, and blushed at it. The angels saw it, and hissed at it; I heard them. I never knew anything like it in executive conduct. The world had just turned away with derision from contemplating one pusillanimous prince, who, when a military adventurer with a few followers landed in his capital, fled before him without an attempt to save his kingdom; but then he fled. Let him be honored for that. The President stood here in the nation's mansion-house;

stood here in the nation's capital, without the spirit to discharge his duty, and without the decency to run away from it.

President Lincoln thought to himself that example was not worthy his imitation. He did not like to rehearse that part again so soon before the American people. Evidently it did not amuse them. He tried another road. It was just then and there that the President unfolded himself to his full length; you saw just how long he was. It was just then and there he got up to his full height, sixteen feet and six inches, I think, more or less. [Laughter.] It was just then and there that he touched the alarm bell of the Republic as he should have done; just then and there that the startled nation came to its feet. From Maine, and from all its forests; from the workshops in Massachusetts; from the warerooms of New York and New Jersey; from the plains of Ohio and the prairies of the Northwest, everywhere, came your citizen soldiery, no man shouldering an unwilling musket, and no man shouldering a musket unwillingly. They came at the invitation of the First Magistrate of the country, not coming one inch, one single step under the compulsion of any power in the country whatever.

What is the result of their coming? The simple act itself said to the waves of rebellion, thus far and no further, and right there all their waves were stayed. You see the result here to-day. Tennessee still speaks to us here in the Senate of the United States, and under the Constitution of the United States, by the mouth of one of her old orators. Kentucky—great, bold Kentucky—well, she did shiver a little in the wind for a while, but then she bowed herself gracefully, as was her wont, to the old constitutional gales, and she took her course under the gallant convoy of the Union, and she will maintain it. Missouri—the very first dose of secession that she has taken made her sick at her stomach, and she spewed her traitorous Governor out of her mouth; and now from the soil of other States, he leaves war, rank war, rebellious, traitorous war, against the people of his own State. Maryland—her representatives here tell you that she is loyal to the core, and by more than twenty-thousand majority. New York, instead of talking about being a free city, sends here her troops, regiment after regiment, to the tune of fifty thousand or more to defend the freedom of the whole Republic and every part of it.

Sir, I do approve of the doing of all these things? There was a time in the middle of this night, when, I have been told, six days passed, six long days of twenty-four hours each, rolled round, and not a message nor a mail passed between the political metropolis of your country and the commercial metropolis of your country. Now not a day passes that does not bring its three regular mails, as regularly as the sun comes upon us: not a day passes that the mails of the United States do not bring me messages from my wife and my children. Do you think I do not approve of the measures that have resulted in this?

I say again, if the President had been charged by the Constitution, and by the laws upon your statute-book, to do these things, and he had done them, I should have said he had done well; that

he had been good and faithful. But, sir, if it be true that he stepped clear outside of the jurisdiction which the Constitution imposed upon him; if he threw himself clear outside of the battlements of the Constitution, and at the greatest personal risk to himself did battle for its preservation, and saved whatever was sacred and valuable inside the walls, I say it was not merely the work of a faithful magistrate; it was the work of a hero. Give him not merely approval; give him thanks. If there is any gratitude in the Republic, let it be spoken here now.

What did he do? Invited the people of the United States to come and save their country. That is what he did. He compelled no man to go with him a foot. He invited them. Why, sir, cannot you allow him to do that? But what if the invitation had come from the Secretary of the Senate; what if it had come from the Mayor of the city; what if the country had been waked up for the first time by the roll-call of war by your drummer boys; and there and then, and for that reason, they had seen their danger, and had come to repel it—unconstitutional, decidedly unwarranted by the statute—but very objectionable, heinous, do you think? Why, do they not tell us—where are the classics of the Senate?—that once Rome was saved by the sentinels of the city being roused by the cackling of geese? I think they deified the geese—senseless, accidental, unmeaning. Your First Magistrate issued a sensible proclamation, laying no constraint upon any man, unless he was a rebel—unless he placed himself in an attitude of hostility to the country, and thus had won the halter—simply issued a proclamation, and did more than the geese did for Rome—waked up not merely the sentinels, but waked up the people themselves. What are you going to do for him? Impeach him, I think, said the Senator from Delaware, not now, but by and by; and I am decidedly of the opinion that it had better be postponed for the present.

This was not all he did, I admit. There was some constraint, not by this act of his, but by another one. He did direct the Commanding General of the United States to suspend the writ of *habeas corpus*. They say that is unconstitutional, illegal, not warranted by statute. The authority to suspend that writ, they say, resides here in the Legislature. It may be so. I am inclined to think that those who framed the Constitution of the United States really did intend that the Legislature should provide the conditions under which that writ might be suspended; but then the suspension of that writ, like the execution of it, is an executive power, and not a legislative power by any manner of means. Congress had not, they assumed and the resolution assumes, prescribed those conditions. The President saw a case in which, as he deemed, the very existence as well as the welfare of the country demanded that the act should be done, and he did it; if you say, not like a faithful magistrate, I say he did it like a brave one.

Sir, I do not know how it is with other Senators upon this floor, but I confess myself to be astounded at those Senators here who profess such unbounded veneration for your statutes as

simply the expression of the will of the people that they will stand by the statute, while the very power which enacted them is being thrown down, and trampled in the dust. That seems to me an excess of veneration for the legislative power. I desire that all our magistrates and all our men shall observe the Constitution, and shall observe the laws; but I do not ask any one of them to bind himself so closely and indissolubly to the forms of the one or the other that he must perish with them both. But the limitations of the Constitution and the limitations of the statute were provided to guard against any encroachments of the Government upon the people, the people upon the Government, or of all the different departments of the Government upon each other; never any one of them designed to so fetter the whole that they could put forth no single exertion which was necessary to save the whole. Why, sir, when I am well, when my blood circulates freely, if a surgeon puts his lancet into my arm he commits an assault, and must pay the penalty; but if I am sick, and need blood letting, and he hesitates to do it, or refuses to do it, he is a coward, and deserves to be kicked out of his profession. When the country is at peace, I hold the President, as the highest citizen in it, as well as the First Magistrate, to the duty of exhibiting the highest evidence of attachment and conformity to the laws; but when the disregard of a form or a precedent is demanded, in order to save the essence and the soul of the whole, the form must give way to the substance.

He did authorize the Commanding General to suspend the writ of *habeas corpus*. I will not go into the discussion of the question how far that was authorized. I say this: I have not the slightest doubt that the President believed the circumstances under which he acted justified that particular act; and if my own judgment differed from his, which it does not, I would still approve the measure; and why? Because, in an emergency like that so suddenly thrust upon the President, a mistake in the exercise of discretion or judgment ought to be dealt by leniently, if the mistake was not willfully committed. What Senator will stand up in his place and say that the President willfully erred in regard to the exercise of this prerogative, either in Baltimore or Pensacola? I think not one. By and by we can investigate the case under which the act happened; but what was it of itself? What is this suspension of the writ of *habeas corpus*? A man is taken as an enemy of the United States upon evidence which convinces the military authorities—and they wield the power, the physical power, of the nation—that this individual is an enemy, and that his liberty, his license to go at large, is not consistent with the welfare and safety of the Republic. He has committed no overt act; he has committed no single act which your statutes describe and declare to be a crime. Governor Letcher, of Virginia, probably had committed no such act until the State had declared herself independent of the Government of the United States, and troops were levied there to make war upon the United States. If we had had a military power there which could have suspended the functions of Letcher himself, do

you not believe the country would have been better off to-day if it had been done, even if it had been done by the suspension of the writ of *habeas corpus*? If he had been put under arrest, Virginia would have been worth millions more to-day than she is.

What shall you say? What do you say? Assaulted as you were by a hostile army, you raise an army to repel it; you fight a battle; you take prisoners; you take only those men whom you find in arms; you confine them; but here is a non-combatant, who wears no epaulets on his shoulders, clothed with civil authority. His great weapon is the writ of *habeas corpus*. He never aimed a gun at you; he never leveled a cannon nor discharged one; but he finds a whole company of artillery in prison; he issues his writ of *habeas corpus*, discharges them all if the return is made to him; and the next day his artillery company level their cannon against your own troops again. You think it is the duty of the commander to catch them again, do you? You think he should not interfere with the exercise of the authority of this civil magistrate, who is simply wielding the writ of *habeas corpus*? He is worse than if he bore a gun against us, for then he would count but a man. Taking the writ of *habeas corpus*, he musters a company of men every time he can have the writ executed and returned and pronounce judgment upon it. You think the functions of the magistrate should not be disturbed; that we should arrest his artillerymen as fast as he discharges them, and we are to let this work of discharging them from imprisonment go on. I do not think so. I would not do it. It is not a humane way of carrying on the war.

The President issued a proclamation calling into the service of the United States forty-two thousand and thirty-four volunteers. It was clearly illegal: I am not satisfied it was necessary. I am inclined to think it was not. If the Administration erred, I would not condemn them. That it was not a willful error, I believe. That it was a willful error, I think no man will assert. Besides, the proclamation itself informed the country that it was to be of no validity unless it was sanctioned by the Congress of the United States, and accordingly you have been passing an act here at this very session to sanction it. No man's rights were interfered with; no man was com-

pelled to enlist; no man was compelled to take a commission. They never drew a sword, they never shouldered a gun; not a man of them. Do you think the liberties of the country have been endangered by that act? Do you hesitate to accord to it your approval, and to say of the act of issuing that proclamation that it shall be as valid as if it had the previous express sanction of the Congress, and no more valid? I do not hesitate to say it; and we owe it to the President of the United States to give to him the sanction of our approval, and to give to him whatever justice there is in the assent of the legislative power of the United States; and so I vote for the resolution, believing each one of these acts to have been necessary, except one, and believing that to have been done in the exercise of an honest judgment, even if a mistaken one; and if mistaken, not the slightest jeopardy arose to the Republic, or to any man in the Republic, unless he be a rebel, and in arms against it.

For these reasons, I vote for these measures; and I approve them, as I said in the outset, all the more because the taking of them involved the President in some personal hazard. I do not approve them more; but I admire them the more because he did not hesitate to save the Republic, although the act of saving it might be attended by some personal risk to himself. Why, sir, I have heard that when a chasm opened in the Forum of Rome, it was said by the oracles that whatever was most precious in Rome, must go into it to close it; and a soldier, with his armor on, mounted his horse, and spurred him into the chasm; and I am told that the conscious earth closed over him. Sir, while your flag floats from yonder dome, let no man who loves the Republic ever forget that, in the year 1861, the President of the United States saw a horrid chasm opening in the Union of the States, and he did not hesitate a moment, clothed with all that was precious to him in the way of name or fame, to plunge himself into the chasm. There may be those who, thinking that a post of personal danger, prefer to stand on the bank of the chasm, and to throw their shafts at him. As for me, I prefer to do as I have told you to-day, go down into the gulf with him, and share whatever peril there is there. I avow my approval of his acts—every one of them.

